

Remarks

Claims 1-13 and 15-30 are currently pending in the captioned Application, and all but claim 10 stand finally rejected over Larkins (US Patent No. 5,641,892) in view of Denyer (US Patent Application Publication US 2003/0146300), while claim 10 stands rejected as unpatentable over Larkins in combination with Denyer together with Gray (US Patent No. 6,808,369). Claims 1, 8, 16 and 24 are independent claims, while the other pending claims each depend directly, or indirectly, from one of the independent claims.

While Larkins has already been discussed in prior prosecution, Larkins does not address, at all, the problem of delivering an aerosol, which, if the "Field of Invention" (Application, page 1) is any guide, is, at least, an important component of the present invention. All of the pending independent claims require an atomizer or, in the case of claim 24, a fluid region for aerosolization.

Consequently, one might first consider the Denyer patent application, which is addressed to a kindred problem: that of delivering a specified quantity of aerosol to a patient. Denyer teaches a method that purports to accomplish that objective. It is a method that may be efficacious, or not. It may be commercially viable, or not. Applicants express no views on those subjects. However, if the description of Denyer is to be credited, Denyer allows a precise unit dose of a liquid substance to be retained in a chamber and then dispensed to a patient. A discussion of some of the considerations involved, and of the purported advantages of the method taught by Denyer, is provided in the background section of the Denyer application, at paragraphs 4-13.

Denyer nowhere suggests any need to determine any volume of any fluid, either liquid or gas, other than as provided by the carefully metered volume provided by Denyer's own metering chamber 6. Denyer teaches that the way to dispense a precise quantity of fluid is to fill a chamber limited to that quantity. Insofar as there any teaching in Denyer pertinent to the present application, it is teaching markedly away from anything claimed in the presently pending independent claims, in that fluid is metered, and in that it is metered by filling a metered volume.

As there is no suggestion, or motivation, to combine Denyer's precise fluid measurement with any auxiliary measurement means, let alone a means for inferring the volume of a liquid from measuring the volume of a vapor, there can be no prima facie case of obviousness.

For completeness, it should also be said that neither does Larkins suggest any application to delivery of an aerosol dose.

Therefore, acknowledging the significance, in their respective fields, of the two references cited against each of the independent claims, the combination of the teachings provided in the present invention is presented for the first time in the present application, and each of the independent claims is deemed allowable over the cited art.

Moreover, for at least the reasons that claims 1, 8, 16 and 24 are allowable over the prior art, so, also, are the claims depending therefrom.

The Application is, therefore, deemed to be in condition for allowance, which action is respectfully requested. Applicant believes that no extension of time is required. If any additional fees are required for the timely consideration of this application, please charge deposit account number 19-4972.

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Respectfully submitted,

A handwritten signature in black ink, appearing to read 'S. J. Petuchowski', written over a horizontal line.

Samuel J. Petuchowski
Registration No. 37,910

BROMBERG & SUNSTEIN LLP
125 Summer Street
Boston, MA 02110-1618
Tel: 617 443-9292
Fax: 617 443-0004

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